

REMARKS

Reconsideration of this application in view of the above amendments and following remarks is requested. After entry of this reply, claims 1, 4-13, 15-19, 22-30 and 32-53 are pending in the application. Claims 1, 40 and 43 are amended, and claims 48-53 are added (claims 2, 3, 14, 20, 21 and 31 were previously canceled).

Please note and record our change of Attorney Docket Number in this matter to: 119645-00103.118.

In the office action dated December 10, 2007, the Examiner allows claims 34-39. The Examiner rejects claims 40-41, 43, and 45-47 under 35 USC §103(a) as unpatentable over Powell (U.S. Patent No. 6,195,590). The Examiner also rejects claims 1, 4, 7-13, 15-16, 18-22, 25-30, and 32-33 under 35 USC §103(a) as unpatentable over Powell (U.S. Patent No. 6,195,590) in view of Chapman (U.S. Patent No. 5,128,860). Further, the Examiner rejects claims 5, 23, and 42 under 35 USC §103(a) as unpatentable over Powell (U.S. Patent No. 6,195,590) in view of Kleinfeld (*Engineering Economics*). Lastly, the Examiner objects to claims 6, 17, 18, 24 and 44 as being dependent upon a rejected base claim, but would allow these claims if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. The Examiner further characterizes the elements of claim 17 allowable if added to claim 19.

Claim Rejections – 35 USC § 103

The Examiner rejects claims 40-41, 43, and 45-47 under 35 USC §103(a) as unpatentable over Powell (U.S. Patent No. 6,195,590). The Examiner also rejects claims 1-4, 7-13, 15-16, 18-22, 25-30, and 32-33 under 35 USC §103(a) as unpatentable over Powell (U.S. Patent No. 6,195,590) in view of Chapman (U.S. Patent No. 5,128,860). Further, the Examiner rejects claims 5, 23, and 42 under 35 USC §103(a) as unpatentable over Powell

(U.S. Patent No. 6,195,590) in view of Kleinfeld (*Engineering Economics*). Applicant respectfully traverses all of the Examiner's rejections under 35 U.S.C. 103(a).

A rejection under §103 requires a showing of all of the following: 1) there must be some suggestion or motivation to modify or combine the references as suggested by the Examiner (it is not sufficient to say that the cited reference can be modified or combined without a teaching in the prior art to suggest the desirability of the modification; 2) there must also be a reasonable expectation of success; and 3) the references must teach or suggest all limitations of the claims. The teaching or suggestion to combine or modify the applied art and the reasonable expectation of success must both be found in the prior art and not in Applicant's specification (MPEP § 2143).

The Examiner refers to passages (col. 2, lines 17-35 and line 65- col. 3, line 20 and lines 60-67, and col. 6, lines 25-55) in Powell as disclosing the selected item order as the basis for the scheduling operation. However, the scheduling in Powell is based on activities – “time-consuming transformation operations in the manufacturing process of a product.” (col. 2, lines 19-22, and col. 3, lines 23-25). Because each step of the claimed method of the present invention is based on item order, the method in Powell does not disclose the method of the present invention. The present invention teaches a method of determining customer service impact based on customer item order, especially with the steps of matching supply and demand as taught in the present invention (e.g., claim 1, line 7-14). Powell does not disclose such steps. Although it may be old and well known in the art that orders are manufactured based on requests from individual customers who require such items, Powell does not suggest that its activities-based method can be modified to be based on item orders. Logically, the completion of an item order may involve many transforming steps (activities) and other events that are treated separately and differently than in the Powell method. There

is also no indication that direct substitution of activities of the Powell method by item order would be successful.

The method in Chapman contemplates the scheduling of input materials and capacities to meet demand. This method is also not based on item order. Accordingly, Powell in view of Chapman still fails to disclose all of the elements of the claimed invention.

In the claimed invention, the step of “deriving” a customer service measurement is implemented by computer to yield a quantitative measurement. In Powell, the act of “balanc[ing] the additional costs against the benefit/penalty of finishing early/late and authoriz[ing] additional expenditures accordingly” (col. 6, lines 30-33) is performed by an individual -- the “project manager.” Applicants have amended independent claims 1, 40 and 43 to distinctively point out this feature.

As for independent claim 19, the claim language distinctively recites a physical component -- a “measurement subsystem for deriving a customer service measurement.” Although Powell does disclose using a computer, the step of deriving is performed by a live person. It follows that Powell could not have disclosed a “measurement subsystem for deriving a customer service measurement.”

Applicants respectfully request withdrawal of the rejections under 35 USC § 103(a).

Claims Added by this Response and Amendment

Claims 48 - 53 are added by this Response and Amendment. Claims 48 and 49 are dependent on claim 1, with claim 50 dependent on claim 49. Claim 51 is dependent on dependent claim 7, which is dependent on independent claim 1. Claim 52 is an independent claim, and claim 53 is dependent on claim 52. These claims are added to more completely cover certain aspects of Applicants’ invention. Similar to the reasons detailed above, the recitations of claims 48 - 53 are patentable over the prior art of record. Support for claims 48

-50 can at least be found on page 2, para. 3, to page 3, para. 1. Support for claim 51 can be found on page 9, para. 2; page 10, para. 1 and 4; and page 11, para. 2, to page 12, para. 2. Support for claims 52 and 53 can at least be found on page 12, para. 3, to page 13, para. 1.

CONCLUSION

In light of the above amendments and remarks, Applicant submits that pending claims 1, 4-13, 15-19, 22-30 and 32-53 are allowable, that the application is in condition for allowance, and requests that the Examiner issue an early notice of allowance. The Examiner is invited to call the undersigned attorney in the event that a telephone interview will advance prosecution of this application.

Respectfully submitted,



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